

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

DOUG SANDEL,  
Plaintiff,

v.

BART BENKE, Individually and  
d/b/a BB TRANSPORT,  
Defendant.

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CASE NO. \_\_\_\_\_

**DEFENDANT BART BENKE, Individually and d/b/a BB TRANSPORT’S  
NOTICE OF REMOVAL**

Defendant Bart Benke, Individually and d/b/a BB Transport files this Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 as follows:

**I.  
PROCEDURAL BACKGROUND**

1. On March 31, 2020, Plaintiff Doug Sandel (“Plaintiff”) filed his Original Petition and initiated an action against Defendant Bart Benke, Individually and d/b/a BB Transport in the 82<sup>nd</sup> District Court of Robertson County, Texas (the “State Court Action”). (*See*, Appendix Exhibit “B”). In the Original Petition Plaintiff alleges that Defendant is a resident of Arkansas.
2. Defendant Bart Benke, Individually and d/b/a BB Transport filed his Original Answer on May 4, 2020. There were jury demands in the State Court Action. (*See*, Appendix Exhibit “D”).
3. Plaintiff’s Petition against Defendant in the 82<sup>nd</sup> District Court of Robertson County, Texas alleges that Defendant was negligent.
4. Defendant has timely filed his Notice of Removal in the State Court Action.

**II.**  
**NATURE OF THE SUIT**

5. This matter arises out of a motor vehicle accident that occurred on April 2, 2018 on State Highway 6 near Yastic Road in Calvert, Robertson County, Texas. The basis of the Plaintiff's legal action are claims in excess of \$200,000 for negligence.

**III.**  
**BASIS FOR REMOVAL**

6. This Court has original jurisdiction under 28 U.S.C. § 1332 over this civil action, and the action may be removed by Defendant pursuant to, in that it is a civil action between citizens of different states, and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

7. Plaintiff was, at the time this action commenced, and is still a citizen of the State of Texas.

8. Defendant Bart Benke, Individually and d/b/a BB Transport resides at 17701 Lawson Rd., Little Rock, Arkansas 72210 and resided therein at the time of the motor vehicle accident made the subject of this lawsuit and at the time suit was filed. Defendant Benke is a citizen of Arkansas for diversity purposes.

9. Because Plaintiff is a citizen of Texas and Defendant is an Arkansas citizen, complete diversity of citizenship exists among the parties.

10. Plaintiff is seeking monetary relief "over \$200,000 but not more than \$1,000,000" as he states he is seeking recovery pursuant to TRCP 47 (c) (4).

11. Moreover, because Plaintiffs in Texas are not limited to recovery of damages requested in their pleadings, "[l]itigants who want to prevent removal must file a binding stipulation or affidavit with their complaints." *De Aguilar v. Boeing Co.*, 47 F.3d 1404, 1412 (5th Cir.1995)

(quoting *In re Shell Oil Co.*, 970 F.2d 355, 356 (7th Cir.1992)). “The general principle is that plaintiffs will have to show that they are bound irrevocably by their state pleadings.” *Id.* at 1412

n.10. No binding stipulation or affidavit was filed with Plaintiff’s Original Petition.

12. Given the nature of Plaintiff’s claims against Defendant, the alleged damages in this action exceed \$75,000, exclusive of interest and costs.

13. Because the amount in controversy exceeds \$75,000, this Court has subject matter jurisdiction under 28 U.S.C. § 1332, and this removal is proper.

14. Pursuant to 28 U.S.C. § 1446(a), Defendant has filed as exhibits to this Notice of Removal copies of all process, pleadings, orders and the docket sheet in the State Court Action.

15. Pursuant to 28 U.S.C. § 1446(d), Defendant will notify the clerk of the court in the State Court Action of this removal and will give notice thereof to all adverse parties.

#### **IV. CONCLUSION**

16. The basis for this removal and this Court’s jurisdiction is diversity of citizenship. 28 U.S.C. § 1332. Plaintiff is a citizen of Texas. Defendant is a citizen of the state of Arkansas. The amount in controversy, based on the allegations in Plaintiff’s Original Petition exceeds \$75,000, exclusive of interest and costs. As such, this removal action is proper. On these grounds, Defendant hereby removes the referenced State Court Action to this Court.

17. WHEREFORE, Defendant respectfully requests that the above-entitled action be removed from the 82<sup>nd</sup> District Court of Robertson County, Texas to the United States District Court for the Western District of Texas, Waco Division.

Respectfully submitted,

**MARTIN, DISIERE, JEFFERSON & WISDOM, L.L.P.**

By: /s/ Mark J. Dyer

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**ATTORNEYS FOR DEFENDANT**

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TRANSPORT**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing instrument has been e-served to all attorneys of record, in compliance with the FEDERAL RULES OF CIVIL PROCEDURE, on this the 4<sup>th</sup> day of May 2020.

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/s/ Alan Moore

**ALAN MOORE**